HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

Old No. 1103 of 1998
W.P. No. 6866 of 2001 (S/S)

Kishan Ram Tamta
Vs.
State of U.P. & others.

Approved for reporting.

~~Not approved for reporting~~

Date of decision 29.5.2004.

Initial of Judge

HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No.6866 of 2001 (SS)
Old No. 1103 of 1998

Kishan Ram Tamta ..... Petitioner

Versus

State of U.P. & others ..... Respondents.

Sri Nandan Arya, Advocate for the petitioner
Standing Counsel for U.P. State and Standing Counsel for Uttaranchal for the respondents.

Dated: 29.5.2004

Hon. Rajesh Tandon J.

Heard the learned counsel for the parties at length.

By the present writ petition the petitioenr has prayed for the issue of a writ of certiorari quashing the order dated 24.2.1998 passed by the respondent no.2, annexure-1 to the writ petition.

Briefly stated the facts giving rise to the present writ petition are that the petitioner was appointed as Assistant Teacher at Rajkiya Ashram Paditiya Vidyalaya, Rudrapur on daily wages on 2.2.1995. He was further appointed on regular basis vide order dated 19.9.1995. The petitioner has stated that his appointment was cancelled vide order dated 24.2.1998 without any notice and without giving opportunity to the petitioner. The petitioner has further contended that his name has also been found place in the seniority list at Serial No. 91.

On 24.2.21998the Director, Samaj Kalyan has passed the order canceling the appointment on the ground that the appointment of the petitioner on the post of Assistant teacher was made in contravention of the rules and Government orders as the petitioner was appointed by the Deputy Director, Samaj Kalyan, Kumaun Division without any authority.

A perusal of the record shows that initially the petitioner was appointed on daily wages vide order dated 2.2.1995 in Government Asharam Padhati Vidhyalay, Nainital. Further the petitioner was appointed in Government Asharam Padhati Vidhyalay, Rudrapur vide order dated 19.9.1995. The service of the petitioner were terminate vide order dated 24.2.1998. The contention of the petitioner is that his service were terminated without giving him opportunity of hearing.

The Apex Court in the case D.K. Yadav vs. J.M.A. Industries Ltd; (1993) 3 SCC 259 has held as under:

"It is a fundamental rule of law that no decision just be taken which will affect the right of any person without fist being informed of the case and giving him/her an opportunity of putting forward his/her cased. An order involving civil consequences must be made consistently with the rules of natural justice. In Mohinder Singh Gill vs. Chief Election Commissioner (1978) 1 SCC 405 the Constitution Bench held that civil consequences covers infraction of not merely property or personal right but of civil liberties, material deprivation and non-pecuniary damages. In its comprehension connotation every thing that affects a citizen in his civil life inflicts a civil consequence. Black's Law Dictionary, 4th Edn. Page 1487 defined civil rights are such as belong to every citizen of the state of country..... they

include..... rights capable of being enforced or redressed in a civil action..... In State of Orissa vs. (Miss) Binapani Dei (1967) 2 SCR 625 this Court held that even an administrative order which involves civil consequences must be made consistently with the rules of natural justice. The person concerned must be informed of the case, the evidence is support thereof supplied and must be given a fair opportunity to meet the case before an adverse decision is taken. Since no such opportunity was given it was held that superannuation was in violation of principle of natural justice.

In State of W.B. vs. Anwar Ali Sarkar 1952 SCR 284: AIR 1952 SC 75 per majority, a seven Judges Bench held that the rule of procedure laid down by law comes as much within the purview of Article 14 of the Constitution as any rule of substantive law. In Maneka Gandhi vs. Union of India (1978) 1 SCC 248 another Bench of seven Judges held that the substantive and procedural laws and action taken under them will have to pass the test under Article 14. The test of reason and justice cannot be abstract. They cannot be divorced from the needs of the nation. The tests have to be pragmatic otherwise they would cease to be reasonable. The procedure prescribed must be just, fair and reasonable even though there is no specific provision in a statute or rules made thereunder for showing cause against action proposed to be taken against an individual, which affects the right of that individual. The duty to give reasonable opportunity to be heard will be implied form the nature of the function to be performed by the authority, which has the power to take punitive or damaging action. Even executive authorities which take administrative action involving any deprivation of or restriction on inherent

fundamental rights of citizens, must taken carte to see that justice is not only done but manifestly appears to be done. They have a duty to proceed in a way, which is free form even the appearance of arbitrariness, unreasonableness or unfairness. They have to act in a manner which is patently impartial and meets the requirements of natural justice."

In a similar case Hon'ble Mr. Justice M.M. Ghildiyal of this Court in W.P. No. 1902 of 2001 (SS) has held as under:

"The learned counsel for the petitioner has further stated that before canceling the ad-hoc appointment the petitioner was not given any shown cause notice nor he was afforded opportunity to be heard. Learned Standing Counsel has filed counter affidavit and stated that the Chief Development Officer who has appointed the petitioner on ad-hoc basis was not a competent authority and as such, the appointment itself was illegal. However, he could not show any authority that prior to cancellation of such appointment there was no need to issue show cause notice or the petitioner was not required to be heard.

Since the ad-hoc appointment was made in the year 1996, the petitioner has worked for more that three years and the appointment was against substantive vacancy it could not have been cancelled without giving opportunity to the petitioner.

For the reasons stated above the writ petition is allowed and the order dated 21.1.1999 is quashed. No order as to costs."

The facts of the instant case are similar to the above-mentioned case. In the present case also the order has been passed without affording opportunity of hearing to the petitioner. The order of cancellation of appointment, therefore,

cannot be allowed to sustain and is hereby set aside. However, the petitioenr shall not be entitled for back wages, as he ahs not worked during the intervening period.

Consequently, the writ petition is allowed. No order as to costs.

29.5.2004 **(Rajesh Tandon J.)**

*Dhyani